

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Application of W.P. Sanitary
Company, Incorporated and
Investigation of W.P. Water
Company, Incorporated and
W.P. Sanitary Company,
Incorporated and Petition
of W.P. Water Company,
Incorporated and W.P.
Sanitary Company,
Incorporated,

Initial In-Person Hearing

Docket Nos.:
A-230550F 2000/
I-00070114/P-00072313

Pages 1 - 80

DOCUMENT
FOLDER

State Office Building
318 Lackawanna Avenue
Scranton, Pennsylvania

Tuesday, July 22, 2008
Commencing at 10:00 a.m.

BEFORE:

EMBER S. JANDEBEUR, Administrative Law Judge

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WITNESS

DIRECT

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NONE PRESENT

P R O C E E D I N G S

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JUDGE EMBER JANDEBEUR:

This is the time and place for an expedited hearing and it relates to the application of Washington Park Sanitary and Washington Park Water Company to abandon services. Also it pertains to an investigation into the running of the company and a petition under Section 529 of the Public Utility Code to have the company purchased by someone else. Today's hearing is exclusively to address encumbrances that apparently are holding up the mediation process. This matter, the whole matter is not in front of me, the whole matter is undergoing mediation currently and I have forgotten when the mediation started, but I believe you guys have been in mediation, somebody refresh my records, six to eight months?

ATTORNEY BROWN:

Since September, early September.

JUDGE JANDEBEUR:

So almost a full year it has been in mediation. Okay. And there are apparently a number of encumbrances against the companies that are stalling finalization of that mediation. Today is the law bureau's petition to have us --- have the PUC

1 declare null and void six encumbrances that they, the
2 law bureau, say under Section 1904, 2102 and 2105 can
3 be declared null and void under our statute. So
4 unless anyone disagrees with me, that is what we're
5 here to look at.

6 ATTORNEY WONG:

7 Your Honor, if I may?

8 JUDGE JANDEBEUR:

9 Yes. And this is Ms. Wong, Darlene Wong
10 speaking. Go ahead.

11 ATTORNEY WONG:

12 Thank you, Your Honor. I just would like
13 to add on, we have a report that as of this morning
14 that for approximately the last 12 hours since about
15 8:00 p.m. last night I guess, a large group of WP
16 customers have been without water whatsoever. As a
17 result of that, I am told the township has gilded many
18 calls and Layman Township which is nearby is
19 anticipated to bring in a water tanker to solve that
20 problem in the ball field at Washington Park. In
21 addition, Washington Township is providing washable
22 water for residents to use and DEP is, I believe that
23 they're at the site now and are hoping to prepare a
24 report on what's causing the problem by today at noon.
25 That brings us up now to the extent that, based on

1 this emergency situation that is just developing,
2 perhaps we can also address the complaints of
3 customers and their need for water service and for
4 some response from the company. I believe the company
5 has counsel here and I don't see Mr. Kresky, but there
6 are complaints that the company is not being
7 responsive to calls and I think that would be an
8 important issue to address to the extent that Your
9 Honor can procure any sort of commitment for the
10 company to at least communicate with the customers as
11 to what to expect in the days to come.

12 JUDGE JANDEBEUR:

13 Okay.

14 ATTORNEY ALBERT:

15 Judge, if I may for the record. My name
16 is Joseph G. Albert. I am Counsel for Carl L. Kresky
17 and Sons, Inc. and I can to some extent confirm what
18 Ms. Wong just said. We are the recipient of the --- I
19 had contacted my clients to attend today's hearing and
20 they had, I talked to them as recently as about eight
21 minutes ago. They are not at the hearing today
22 because the utilities have requested, even though we
23 are the recipient of these motions to discharge our
24 purported encumbrances, my clients are going up to
25 repair a pump which they believe will address whatever

1 the problem is and I don't know any information beyond
2 that because I did call up and say, where the heck are
3 you and they're going to repair a pump, I think in my
4 client's term, was to clean a pump. I don't know
5 anything beyond that, I'm certainly not going to
6 dispute anything that was said up to this point, but I
7 can report that that's what my client's have told me.

8 ATTORNEY WONG:

9 Your Honor, may I add to the
10 information ---.

11 JUDGE JANDEBEUR:

12 Yes, Ms. Wong.

13 ATTORNEY WONG:

14 --- that I know? Thank you. What the
15 OCA has been told through our contacts with the
16 township and customers is that it is either well
17 number one or two that is dry. And I believe I have a
18 report that well number one was pumping at most 11
19 gallons a minutes and then either well three or four
20 has had some problems with a fuse blowing, so there
21 are problems getting the pump to operate there.

22 ATTORNEY BORLAND:

23 Your Honor, if I may speak?

24 JUDGE JANDEBEUR:

25 Okay. This is Mr. Borland?

1 ATTORNEY BORLAND:

2 Yes, Your Honor.

3 JUDGE JANDEBEUR:

4 Okay. Hold on one second, Mr. Borland.
5 Would you sign that sheet for me, please, Mr. Albert?

6 ATTORNEY ALBERT:

7 I did, Your Honor.

8 JUDGE JANDEBEUR:

9 And would you pass it over to this table
10 so they can.

11 ATTORNEY BROWN:

12 We already had it, Your Honor.

13 JUDGE JANDEBEUR:

14 You did? Okay. Have all the lawyers
15 signed in? Mr. Niesen, have you signed in?

16 ATTORNEY NIESEN:

17 I have, Your Honor.

18 JUDGE JANDEBEUR:

19 Ms. Wong?

20 ATTORNEY WONG:

21 I need to sign in, Your Honor.

22 JUDGE JANDEBEUR:

23 Okay. If I can get all the lawyers to
24 sign in, then I hopefully won't be guessing too much.
25 Most names I know, Mr. Albert, obviously you're new,

1 Mr. Borland, you're new for me. Some are not, but
2 just to try and keep us organized. Go ahead, Mr.
3 Borland.

4 ATTORNEY BORLAND:

5 I'm Co-Counsel with Mr. Preate and Mr.
6 Preate will, I'm sure, take the lead hereafter. But
7 since I was here at the beginning, I wanted to speak
8 to the scope issue and certainly to the issue of the
9 long raised, which as Counsel for WP was unaware of it
10 until Ms. Wong spoke. Certainly we aren't in a
11 position as Counsel for WP to respond to those in this
12 setting, but we certainly understand the significance
13 of the complaints and we will deal with them, but I
14 can't make any response factually to that whatsoever
15 except for what Mr. Albert has said on behalf of the
16 drilling company and what Ms. Wong said.

17 With respect to the scope, frankly, the
18 only issues that remain holding up completion of the
19 mediated agreement are three mortgages with successors
20 to Hanover Bank and Summit Bank, which is Bank of
21 America. The issues with the drilling company have
22 been resolved. The drilling company has agreed to
23 remove mechanics liens or remove the mortgages and
24 agreements have been signed and executed and being
25 held by Mr. Preate, you know, pending the resolution

1 of the Bank of America matters, so understandably,
2 that the drilling company doesn't wish to be put in a
3 position subordinate to Bank of America by eliminating
4 their interests if Bank of America's issues aren't
5 resolved. Those Bank of America mortgages date back
6 12, 15 years, and we have every reason to believe that
7 they will be eliminated. We've already filed a
8 petition, an amended petition here to have them
9 invalidated for similar reasons as to the drilling
10 company's issues and we expect resolution of that, but
11 parties have done everything necessary to bring this
12 to a conclusion, bring it to a closing, but for that
13 issue which is now pending before the PUC as well.

14 JUDGE JANDEBEUR:

15 Okay. Hold on one second, I can see that
16 you're up, but hold on one second. Mr. Borland, the
17 three encumbrances that you're talking about, that's
18 in your amended; correct?

19 ATTORNEY BORLAND:

20 Yes.

21 JUDGE JANDEBEUR:

22 And that is not at all in the law
23 bureaus; is that correct?

24 ATTORNEY BORLAND:

25 That's correct.

1 JUDGE JANDEBEUR:

2 Okay. Because that was one of things
3 that was confusing me. I have, and I believe in your
4 original emergency petition answer, you also listed
5 one from DEP that is also not in the law bureaus.

6 ATTORNEY BORLAND:

7 DEP's interest does not interfere with
8 closing, does not interfere with mediation.

9 JUDGE JANDEBEUR:

10 So then why was it in your answers?

11 ATTORNEY BORLAND:

12 It would have been erroneous to raise
13 that as an issue.

14 JUDGE JANDEBEUR:

15 Okay. So it is not an issue?

16 ATTORNEY BORLAND:

17 Right.

18 JUDGE JANDEBEUR:

19 All right. So I'm going to disregard
20 that one. But there's three new ones that are in your
21 answer, are an issue, that somehow are in the law
22 bureau's.

23 ATTORNEY BORLAND:

24 It's in ---.

25 ATTORNEY PREATE:

1 And it's in our petition.

2 JUDGE JANDEBEUR:

3 Your emergency petition?

4 ATTORNEY BORLAND:

5 Right.

6 ATTORNEY PREATE:

7 Emergency Petition.

8 JUDGE JANDEBEUR:

9 Thank you.

10 ATTORNEY BORLAND:

11 We did as the law bureau to join us with
12 that, and we would expect that they would join us in
13 striking off the Bank of America encumbrances. But
14 for today's purposes, all that can be done or all that
15 really law bureau has requested, has been accomplished
16 by agreement. The only thing that hasn't been
17 resolved is the actual recordation of the releases and
18 satisfactions which has been pending. But the
19 understanding is that that will be deferred until Bank
20 of America is resolved. There can't be a closing ---.

21 JUDGE JANDEBEUR:

22 These three are the hold up?

23 ATTORNEY PREATE:

24 That's exactly right, Judge.

25 ATTORNEY BORLAND:

1 Yes.

2 ATTORNEY PREATE:

3 There is nothing else holding us up right
4 now except for the Bank of America.

5 JUDGE JANDEBEUR:

6 Okay. That was Mr. Preate speaking.
7 Again, just first time around state your name so the
8 court reporter has it. That was Mr. Preate speaking.
9 Sir?

10 ATTORNEY BROWN:

11 Your Honor, Kriss Brown, with the Public
12 Utility Commission. We don't agree with their
13 characterization of everything that's going on.

14 JUDGE JANDEBEUR:

15 Oh, gee, come on. That's just not what I
16 wanted to hear. Okay. Go ahead, Mr. Brown.

17 ATTORNEY BROWN:

18 First of all, Your Honor, there's two 1.6
19 plus million dollar mortgages in my own county and
20 your order directed WP to remove those. They're still
21 present, they are still present. No one is going to
22 buy this property with these mortgages still on the
23 books. Number two ----.

24 JUDGE JANDEBEUR:

25 Those are the Carl Kresky, the 1.6.24; is

1 that what you were saying?

2 ATTORNEY BROWN:

3 Yes, Your Honor.

4 JUDGE JANDEBEUR:

5 And they're saying those have been
6 resolved and Mr. Albert is saying those have been
7 resolved. Did I not understand that those have been
8 resolved pending, getting rid of the Bank of America
9 ones?

10 ATTORNEY BORLAND:

11 Yes, Your Honor.

12 JUDGE JANDEBEUR:

13 So they really aren't resolved until we
14 resolve those three.

15 ATTORNEY BORLAND:

16 They have to be recorded at closing,
17 that's the understanding.

18 JUDGE JANDEBEUR:

19 But they won't be recorded at closing
20 unless we resolve the Bank of America ones.

21 ATTORNEY BORLAND:

22 There can't be a closing unless Bank of
23 America is resolved.

24 ATTORNEY BROWN:

25 Your Honor ---

1 JUDGE JANDEBEUR:

2 Hold on.

3 ATTORNEY BROWN:

4 --- there's no reason for them to still
5 be on the books because you directed them to --- you
6 know, to remove them.

7 JUDGE JANDEBEUR:

8 Maybe they disagree with me but they
9 didn't appeal it.

10 ATTORNEY BROWN:

11 Correct. It's here in the order, Your
12 Honor.

13 JUDGE JANDEBEUR:

14 Has enough time gone by that you're going
15 to argue that my order should stand?

16 ATTORNEY BROWN:

17 No, it's an interim order, but I guess
18 --- but Your Honor, that's why we want to go forward
19 with this hearing, we believe that those 1.6 mortgages
20 are false mortgages. There's nothing to do ---.

21 JUDGE JANDEBEUR:

22 Under 2105 and 2102 you're going to make
23 that argument?

24 ATTORNEY BROWN:

25 Yes, Your Honor.

1 JUDGE JANDEBEUR:

2 They are affiliated interests?

3 ATTORNEY BROWN:

4 Yes.

5 JUDGE JANDEBEUR:

6 Okay.

7 ATTORNEY BROWN:

8 And then the mechanics liens, Your Honor,
9 again they say, we got pleadings to show that they're
10 not even challenging.

11 BRIEF INTERRUPTION

12 JUDGE JANDEBEUR:

13 Go head, Mr. Brown.

14 ATTORNEY BROWN:

15 So their pleadings here, they admit that
16 all but \$41,000 of mechanics liens that were filed in
17 Wyoming County are invalid. They're not even going to
18 contest that, they're not even moving forward with
19 those, so why they're still in the books, we wonder
20 why that is.

21 JUDGE JANDEBEUR:

22 Okay.

23 ATTORNEY BROWN:

24 And number four, Your Honor, they keep
25 saying that these are all resolved. They're only

1 resolved if the Bank of America stuff is resolved,
2 with their, they want to get their \$41,000 from the
3 sale prices. They're ---.

4 JUDGE JANDEBEUR:

5 What's the \$41,000. Is that the three
6 added up?

7 ATTORNEY BROWN:

8 That's strictly part of their agreement,
9 they're saying they've resolved everything, they want
10 \$41,000 to get rid of the mechanic's liens and
11 mortgages.

12 JUDGE JANDEBEUR:

13 Who's they?

14 ATTORNEY BROWN:

15 That would be Kresky and Sons and the
16 ones who placed the mechanic's lien on it. And if,
17 Your Honor --- if maybe the Bank of America mortgages
18 could be resolved possibly with the proceeds of the
19 sale and then they would still maintain those
20 mechanic's liens on the properties and call them
21 against AQUA or EWC or whatever other company
22 purchases the land, so that's what's going on here,
23 Your Honor. It's not completely resolved.

24 JUDGE JANDEBEUR:

25 Okay. Mr. Niesen, you want to weigh in?

1 ATTORNEY NIESEN:

2 Well, Your Honor, I'm Tom Niesen
3 representing Aqua Pennsylvania, a little Washington
4 Waste Water Company. Your Honor, I don't think it's
5 inconsistent, perhaps, with what Mr. Borland
6 indicated, but it should be clear that these large
7 mortgages and large mechanic's liens, they have to be
8 resolved and completely removed from the record prior
9 to Aqua's execution of asset purchase agreements, or
10 the Little Washington Water Company's execution of any
11 asset purchase agreement. I don't think that's
12 inconsistent with what they said, but I think the
13 record should be clear about that and it's expressed
14 in our answer to both the law bureau and the WP
15 Company's petitions in motion.

16 ATTORNEY BORLAND:

17 Judge, if I may?

18 JUDGE JANDEBEUR:

19 Hold on one second. I have a question,
20 Mr. Niesen. Is it your client position that these
21 three Bank of America liens are something over which I
22 do not have any authority?

23 ATTORNEY NIESEN:

24 Your Honor, I don't know the details of
25 the three Bank of America related mortgages. It seems

1 to me that none of those entities are affiliates of
2 either of the WP Companies, so that statutory argument
3 seems to be the basis for quite a bit of what's
4 presented to you. The docs seemed to me to apply to
5 those particular mortgages. There's still a question
6 about the Chapter 19 Securities Certificate
7 registration and I'm not prepared to say that Your
8 Honor would conclude that those mortgages have not
9 been properly registered under Chapter 19, that it
10 then invalidates the bank's ability to correct that
11 because there's a legal issue and question about that.

12 JUDGE JANDEBEUR:

13 Well, I think, if I'm not correct,
14 doesn't 1901 say that the commission can declare null
15 and void any security not properly filed, but that
16 that doesn't preclude the entity, that's the losing
17 entity from going to court to common pleas and seeking
18 egress. So even if I say that these three liens are
19 invalid under 1901, Bank of America can still go to
20 Courts of Common Pleas. Would you agree with me that
21 far, or do you feel uncomfortable that you haven't
22 done enough research? That's fine, you just have to
23 tell me.

24 ATTORNEY NIESEN:

25 I'm not here representing Bank of

1 America, but --- and I think the section of the code
2 that you have in mind is Section 1904.

3 JUDGE JANDEBEUR:

4 No, I think it's 1901. Look at the last
5 language --- I might be wrong, I might be missing
6 numbers.

7 ATTORNEY NIESEN:

8 It's 1904 that talks about an innocent
9 holder for value.

10 JUDGE JANDEBEUR:

11 Yes, that sounds like the one I was
12 thinking of.

13 ATTORNEY NIESEN:

14 And I think that that language raises
15 some questions about whether the commission has the
16 ability to step in and declare a lender's note or loan
17 invalid.

18 JUDGE JANDEBEUR:

19 I don't know either, that language. The
20 language certainly implies to me that the commission
21 can do it, whether it withstands Commonwealth Court,
22 I'm not sure either, which is why I asked you your
23 opinion of it. I think 1904 says I can do it. It
24 doesn't necessarily say it'll be successful, but I
25 think 1904 says that I can do it, then Bank of America

1 can choose to do with that order whatever they please.
2 They can say, no you can't do it and they can argue
3 that, but I think more importantly, this section and
4 you are right, it is 1904, not 1901, those say that,
5 that doesn't preclude them from looking for the money
6 and trying to get it elsewhere, just use it for
7 purposes of a commission statute that I do have that
8 authority. Again, I don't know how far it gets us.
9 Mr. Brown?

10 ATTORNEY BROWN:

11 And I agree with your reflection on that
12 as well, Your Honor. So that's our position as far as
13 the Bank of America.

14 JUDGE JANDEBEUR:

15 So you're going to argue that, yes, I can
16 do it and we just don't know how far it's going to go?

17 ATTORNEY BROWN:

18 Yes.

19 JUDGE JANDEBEUR:

20 Would you agree with that, Mr. Preate,
21 Mr. Borland and I don't know if you guys are going to
22 agree on everything, but one of you has got to kind of
23 take a lead here.

24 ATTORNEY PREATE:

25 I prepared this amended petition,

1 researched it, we've been trying to get --- Mr.
2 Borland and I have been trying to get ahold of Bank of
3 America to make them talk to us and they haven't been
4 able, they have not responded. So there is a section
5 of the law that says that when a mortgage holder is
6 notified in this particular fashion, that the mortgage
7 should be satisfied, that the mortgage holder, the
8 bank, would be then in court responsible for the full
9 extent of the mortgage that is unsatisfied and that is
10 --- that's a 2002 statute that was passed by our
11 legislature. Now, we are attempting to put Bank of
12 America on notice every way we possibly can. We filed
13 a petition in haste earlier, we filed an amended
14 petition with more details of three mortgages and in
15 the amended petition, you will see allegations that we
16 have paid these mortgages. In paragraphs 13, let's
17 see, 12, 13, 14, 15, that we paid them. The Bank of
18 America and it's predecessors, Summit Bank and Hanover
19 Bank for over a decade have not submitted any
20 invoices, bills, statements, nor have they ever gone
21 to court to seek payment of these \$75,000 worth of
22 mortgages. It's the testimony of my client and as it
23 would be verified by the testimony of Mr. Albert's
24 clients who were present at these matters, that money
25 used for a sale of certain assets, Laurel Lakes

1 property was used to pay off these mortgages back in
2 the '90s and Bank America has reported, at least in an
3 early conversation to Mr. Borland that they had no
4 records, they have no records. So in attempting to
5 get them to move, we've had to go to court. They
6 won't move unless we go to court, so this proceeding,
7 one of the things you want to do is bring before the
8 PUC, before you, and have them answer, do you have any
9 records at all. These mortgages were not approved by
10 the PUC under 1901, 1904 and they're invalid, null and
11 void, declared null and void by you and you've already
12 done that in regard to the other mortgages. Now, the
13 difference between the other mortgages and this
14 mortgage is that Mr. Albert and his client and I, on
15 behalf of WP Water and WP Sanitary have entered into
16 an agreement whereby we had executed documents that
17 these mortgages are being satisfied. The only thing
18 that remains is for them to be filed.

19 It is on that agreement basis that you
20 made your decision earlier in this case and decided
21 that. In the case of Bank America, we have no
22 underlying agreement, so Mr. Albert's clients, the
23 drilling company, cannot now come into court, even
24 though they're declared null and void by you, they
25 cannot go into court and seek to have those mortgages

1 enforced because we have their satisfactions signed
2 and executed. That's where we are.

3 ATTORNEY BROWN:

4 Your Honor, it's set forth ---.

5 ATTORNEY PREATE:

6 Excuse me.

7 JUDGE JANDEBEUR:

8 Hold on both of you. Is there any reason
9 that you did not request a subpoena to bring Bank of
10 America here today since that seems to be the only
11 stumbling block left in this case?

12 ATTORNEY PREATE:

13 Well ---.

14 ATTORNEY BORLAND:

15 We didn't, because we hadn't --- Your
16 Honor, and at the time we discussed that, we didn't
17 believe that with the amended petition we had enough
18 time to get them served, to get them here for that
19 purpose from Thursday of last week, so you know that
20 would be, you know, our sense. We hadn't had any
21 response from them to the other petition and you know,
22 they would be in a position to make a defense at that
23 point as having had inadequate notice.

24 JUDGE JANDEBEUR:

25 Why on earth if this has been going on

1 since September of last year did you run out of time?

2 ATTORNEY BORLAND:

3 Well, with Bank of America mortgages at
4 first, our position was, just as Mr. Preate had said,
5 have been paid and we ran --- we went weeks and weeks
6 and weeks with an informal contact, first with the
7 Hanover Summit successors in Wilkes-Barre and Omega to
8 track down the right person at Bank of America in
9 their Special Assess Division, indicating first that
10 all we had to do is provide them with an affidavit
11 that we had paid, the mortgage was paid, paid the
12 underlying obligations. Upon that, it's well now,
13 we're not quite so sure and they did hold us off. So
14 ultimately we did file the petition and obtain service
15 on it, first the office at Wilkes-Barre and then the
16 office in Scranton with the amended petition, but in
17 terms of bringing them in from last week, we did not
18 get them subpoenaed.

19 ATTORNEY PREATE:

20 These letters that Your Honor may have
21 seen, the Bank of America mortgage surfaced in a title
22 search that was done earlier this spring by Aqua. My
23 clients had always maintained that that was paid.
24 Unfortunately, the title search showed that it hadn't
25 been paid and they weren't satisfied, so what we did

1 was as lawyers try to do the lawyerly thing, to talk
2 to Bank of America and see if they'd recognize it and
3 that's what Mr. Borland was doing for months. And
4 they kept saying, well, we'll look into it.

5 First I didn't know if he had to track
6 down who was involved in it because it wasn't a Bank
7 America mortgage, it's really the Hanover and Summit
8 Bank mortgages and so what, finally we got to the
9 point where they just never returned his phone calls.

10 JUDGE JANDEBEUR:

11 Okay.

12 ATTORNEY PREATE:

13 And that's where we are, so we said at
14 that point, Mr. Borland and I said, okay, let's sue
15 them and one of the first places we've sued them is
16 here. We also have a remedy under the 2002 statute to
17 sue them in court and we intend to exercise that if
18 they don't respond, but we have served them properly.

19 JUDGE JANDEBEUR:

20 Okay. All right. Let's get back to
21 today's business and I have in front of me basically
22 dual actions. I have the motion of the law bureau and
23 I have your petition, an amended petition. They don't
24 perfectly mirror one another, so I'm not sure which
25 one of you wants to go first and if you want to

1 discuss it, we can take a brief recess so you can
2 figure out who wants to go first and who's going to
3 present what, but.

4 ATTORNEY BROWN:

5 Your Honor, we had planned to call Carl
6 first, I mean, so that would be who they would have to
7 address their petition as well.

8 ATTORNEY PREATE:

9 Well, Carl's not here 'cause he's trying
10 to deal with this problem up at the Washington Park
11 right now. I mean, he's looking for parts, he's
12 looking for pumps, I mean, please.

13 JUDGE JANDEBEUR:

14 Mr. Preate, is it going to be your
15 position and Mrs. Kresky's position that she can't
16 answer these questions?

17 ATTORNEY PREATE:

18 Well, she can do it to a limited extent.
19 I don't know what the questions they want to ask are,
20 but we have, I thought, resolved all of these issues.

21 JUDGE JANDEBEUR:

22 Okay. Hold on.

23 ATTORNEY PREATE:

24 We have agreements signed. I don't know
25 what Kriss Brown is, what difference is there in the

1 petitions.

2 ATTORNEY BROWN:

3 Your Honor, he may have affiliated
4 interest issues is the main difference. We have Carl
5 Kresky president of all three companies for a majority
6 of this time. We have submitted interrogatories which
7 they did not respond to, so now we're at the point we
8 need him on the stand to answer and flesh out all that
9 information for Your Honor.

10 JUDGE JANDEBEUR:

11 Okay. And this is your position, Mr.
12 Brown, that today is a waste of time, we have to
13 reschedule when there's not an emergency.

14 ATTORNEY BROWN:

15 I don't know if it's a total waste of
16 time. We have, also --- but I would like to have Carl
17 address the questions first before we put on our
18 engineer because it may affect his testimony as well.

19 JUDGE JANDEBEUR:

20 That doesn't answer my question, Mr.
21 Brown. Do you want to go forward today or do you want
22 to continue the hearing? We're between a rock and a
23 hard place with you saying I want Mr. Kresky and Mr.
24 Kresky is obviously not here.

25

1 ATTORNEY BROWN:

2 Well, we can submit initial documents,
3 Your Honor, I guess then, and then I don't know if
4 Sandy could address some of the questions and then we
5 would have to, I guess, adjourn to continue the
6 hearing, Your Honor.

7 ATTORNEY BORLAND:

8 Your Honor, what I don't understand is
9 what the difference in outcomes would be regardless of
10 any difference in particular paragraphing of
11 allegations. We, on both sides of this room, have
12 asked for the same remedy. And we've ---.

13 JUDGE JANDEBEUR:

14 Yes. The only difference is the law
15 bureau doesn't have the Bank of Americas listed where
16 as you guys do. But it does seem that, at least both
17 of you, not Mr. Niesen's client, but both of you do
18 seem to agree that these should all be declared null
19 and void. I mean, that is what I read, but the Bank
20 of America ones are new in your amendment.

21 ATTORNEY BORLAND:

22 I would suggest that if we had an
23 adjournment and now we've got Bank of America served
24 twice and now with a subpoena for a date and also rule
25 for them to respond to the petitions. I frankly

1 remain very hopeful that they're not going to defend
2 because they don't have --- they have not demonstrated
3 any belief in the past 12 years that they're owed any
4 money. And now I think when they're confronted with
5 the power of this commission to investigate the
6 validity of that mortgage, they're going to say, well,
7 we don't have any proof that we're owed any money and
8 we'll concede and then, at that point, we can file the
9 documents that Mr. Brown has referred to, we can then
10 secure execution of the agreements from Aqua because
11 those pre-conditions would have been achieved and we
12 can schedule a closing.

13 JUDGE JANDEBEUR:

14 Mr. Brown?

15 ATTORNEY BROWN:

16 Your Honor, the only difference in our
17 pleadings is we asserted the affiliated interest
18 agreements issue and they did not. In this case we
19 got Carl Kresky and Sons an affiliated interest of WP
20 Water and WP Sanitary. The difference between them,
21 the position they are in hopes to Bank of America is
22 that 1904 does not apply. They are not an innocent
23 holder. 2105 actually applies and there you can
24 declare the contract void and in there are the terms,
25 the affiliated interest will be declared to whoever

1 breached the contract. So anything that those
2 mechanic's liens and mortgages, those contracts that
3 those were meant to uphold are void, all of that is
4 void.

5 JUDGE JANDEBEUR:

6 Okay. And that is the testimony you
7 wanted from Mr. Kresky?

8 ATTORNEY BROWN:

9 Part to declare, flesh out the affiliated
10 interest, when all that occurred, some of their
11 assertions, counter that and also our engineer to
12 present testimony that all the work performed was not
13 reasonable and necessary improvement.

14 JUDGE JANDEBEUR:

15 Okay. And Mr. Preate, not you Mr.
16 Albert, Mr. Preate. Is Mr. Kresky going to argue that
17 Carl Kresky and Sons is not an affiliated interest of
18 Washington Park Water or Sanitary?

19 ATTORNEY PREATE:

20 It is not right now and it's a separate
21 company, it's owned by his children and they're
22 running the operation.

23 JUDGE JANDEBEUR:

24 That doesn't answer the question. Is he
25 going to argue that it is or is not an affiliated

1 interest?

2 ATTORNEY PREATE:

3 At this point, it is not an affiliated
4 company.

5 JUDGE JANDEBEUR:

6 Okay. During the time period in
7 question, not now, during the time period in question,
8 is he going to argue that Carl Kresky and Sons is or
9 is not an affiliated interest?

10 ATTORNEY PREATE:

11 You mean the time period going back
12 to ---?

13 JUDGE JANDEBEUR:

14 This case. The time period that the 5/29
15 case in question is.

16 ATTORNEY PREATE:

17 Well, I don't know when they actually
18 took over the business, Mr. --- I never handled that
19 aspect of it. Mr. Albert may be able to address that,
20 but we already have an agreement with the --- that's
21 why I say this is unnecessary because the drilling
22 company folks have already executed documents
23 satisfying the mortgage.

24 JUDGE JANDEBEUR:

25 No. They're contingent documents. Ask

1 Mr. Borland --- they are contingent documents, it's
2 not satisfied. It's contingent upon settling the Bank
3 of America issues.

4 ATTORNEY PREATE:

5 That's not in the document.

6 JUDGE JANDEBEUR:

7 Mr. Borland?

8 ATTORNEY BORLAND:

9 It's not in the documents.

10 ATTORNEY PREATE:

11 It's not in the documents.

12 ATTORNEY BORLAND:

13 But we have an understanding that those
14 will be filed, you know, upon that resolution of that
15 issue.

16 JUDGE JANDEBEUR:

17 That was my understanding as well.

18 ATTORNEY PREATE:

19 But it is not in the --- the
20 satisfactions exist, there's nothing in there.

21 JUDGE JANDEBEUR:

22 If he doesn't trust you they're going to
23 be put in the documents.

24 ATTORNEY PREATE:

25 They're what?

1 JUDGE JANDEBEUR:

2 If he doesn't trust you, Mr. Borland said
3 it's an agreement.

4 ATTORNEY PREATE:

5 It is an agreement between lawyers,
6 that's what it is and if we list Mr. Albert and myself
7 and Mr. Borland that that's what we were going to do
8 and we had --- they have executed the documents, we
9 have executed the assignment of the proceeds of the
10 potential sale of the company. That's ---.

11 JUDGE JANDEBEUR:

12 How about Aqua; is Aqua in on this?

13 ATTORNEY PREATE:

14 Aqua's absolutely aware of this.
15 Absolutely.

16 JUDGE JANDEBEUR:

17 Okay. If there's any encumbrance,
18 they're not going to sign.

19 ATTORNEY BORLAND:

20 That's correct and that's very much the
21 whole point of this discussion and that's why I asked
22 Mr. Brown, what's the relief that he's seeking today
23 because we have established the present ability to
24 accomplish that relief immediately upon the other
25 pre-condition which is still a pre-condition to Mr.

1 Brown's situation and a pre-condition to Aqua's
2 situation.

3 JUDGE JANDEBEUR:

4 And that pre-condition is?

5 ATTORNEY BORLAND:

6 The Bank of America encumbrances have to
7 be eliminated. There can't be a closing, there cannot
8 be improved service to the community and to these
9 customers based on this sale that everybody has wanted
10 to work on and get done now for ten months without
11 that being done and we think that we are at the brink
12 of that.

13 My question that I haven't heard Mr.
14 Brown answer is what difference does it make between
15 his proceeding now on a particular theory when we have
16 the same result, the same outcome already
17 accomplished. We have that done. There's nothing
18 more that can be done without Bank of America and I
19 don't think they disagree with us, without Bank of
20 America being resolved and we believe that we have the
21 legal ability to get those invalidated and we filed
22 the petitions even if they had been subpoenaed here
23 today, they wouldn't have been, they'd be subpoenaed
24 witnesses as opposed to be subpoenaed as responsive
25 parties in that situation.

1 They have their rights under the same
2 processes as all of the parties do. At the next
3 hearing, that can all be brought together, finished.
4 But here today, I don't see any --- I just don't
5 understand what possible different outcome can be
6 achieved with Mr. Brown's petition compared to what
7 we've asked for which we then resolve with our
8 agreements. That's all I'm saying.

9 JUDGE JANDEBEUR:

10 Good point. Mr. Brown?

11 ATTORNEY BROWN:

12 Your Honor, we respectfully differ. The
13 difference is Bank of America is an innocent third
14 party and Aqua has agreed to proceed with mediation,
15 proceed with asset purchase agreements with those
16 still present and that they will be resolved for
17 closing. The problem is the difference is we've got
18 Carl Kresky and Sons, Carl Kresky involved in the
19 other parties, they've delayed this multiple times.
20 We started the mediation after mediation, mediation
21 started in September, Your Honor, the evidence will
22 show that they filed these mortgages October 4th, 1.6
23 million dollar mortgages, two 1.6 million dollar
24 mortgages October 4th and then when they figured that
25 wouldn't work, in March of 2008, they filed the three

1 mechanic's liens and now they've agreed to resolve
2 those pending all the other conditions for \$41,000.

3 It's just a continued delay and we'd like
4 to move forward and have those declared void at this
5 point and as I was saying about the affiliated
6 interest, Your Honor, like I said, they're not an
7 innocent third-party and that's the difference. What
8 else are they going to do next? And as far as
9 affiliated interest, Your Honor, it doesn't matter
10 whether the sons own the company or not, you know, the
11 statute family members is still considered affiliated
12 interest. And number two, when you talk about the
13 amounts here, 1.2, 1. --- over three million dollars
14 in mortgages and over \$600,000 in mechanic's liens,
15 are they asserting that they were done after he turned
16 over control of the company like sometime last year or
17 was this done during the whole period that Carl Kresky
18 was in control of all three companies?

19 JUDGE JANDEBEUR:

20 Mr. Brown, what is your take on --- well,
21 let me give you --- it appears to me that Mr. Kresky
22 is deliberately stalling out settlement of the Asset
23 Purchase Agreement. Why do you think that is? Well,
24 first, do you agree with my premise?

25 ATTORNEY BROWN:

1 I do, Your Honor.

2 JUDGE JANDEBEUR:

3 And then why, what's he's doing?

4 ATTORNEY BROWN:

5 He wants more money.

6 ATTORNEY PREATE:

7 Your Honor, I must say ---.

8 JUDGE JANDEBEUR:

9 Hold on. Hold on. Just hold on, Mr.
10 Preate, I'm not done. I'm having a hard time seeing
11 where the money's going to come from no matter how he
12 gets this completed.

13 ATTORNEY BROWN:

14 Understood, Your Honor. But when he puts
15 encumbrances on the property, anybody who's buying
16 these company or this water company.

17 JUDGE JANDEBEUR:

18 Has to clear the encumbrance.

19 ATTORNEY BROWN:

20 They're not going to --- they're not
21 purchasing the companies. They're not purchasing WP
22 Water or WP Sanitary, so the debts of those companies
23 don't go with it. They're only purchasing the
24 property, but the only way they can get, so they
25 attach liens on the property to and after they sell.

1 Let's assume they do greet a purchase, when you're
2 having this case, Your Honor, you have the same people
3 who sold the property holding the mortgages, so the
4 sale price is not real.

5 JUDGE JANDEBEUR:

6 Yes. That was a good answer because I
7 just didn't see that and that does make a little bit
8 more sense. At least that's a reason to stall it out,
9 whether it's correct or not, you know, Mr. Preate, you
10 can address that, but I don't need to hear that right
11 now. At least it's one reason why. I couldn't see a
12 reason why you would be deliberately stalling out
13 this. Okay.

14 ATTORNEY BORLAND:

15 Your Honor.

16 ATTORNEY PREATE:

17 Your Honor.

18 ATTORNEY NIESEN:

19 Your Honor, I have one thing to say, too.
20 Hold on.

21 JUDGE JANDEBEUR:

22 Gentlemen. Mr. Niesen, all of you can
23 wait one second. You've been standing up the whole
24 time, what would you like to say? Put your name on
25 the record first.

1 MS. TUNILO:

2 Candice Tunilo for the OCA. I'm just
3 thinking I can clear up something here really quick.
4 I have the Department of State Corporation Bureau
5 information for Carl Kresky and Sons, Inc. As of
6 11/2/2007, Carl Kresky was the president, secretary
7 and treasurer of the company which would be after the
8 mortgage that Mr. Brown spoke on.

9 JUDGE JANDEBEUR:

10 Okay. Thank you, Ms. Tunilo.

11 ATTORNEY ALBERT:

12 If I may, please, I've been ---.

13 JUDGE JANDEBEUR:

14 Hold on one second. Mr. Preate, Mr.
15 Borland, Mr. Nielsen, I'll get to you in one second.
16 Okay. Mr. Albert, go ahead.

17 ATTORNEY ALBERT:

18 This is the first PUC hearing I've ever
19 been at.

20 JUDGE JANDEBEUR:

21 This was not a good way to start, you'll
22 have to rethink that.

23 ATTORNEY ALBERT:

24 You know, you might be right, Your Honor,
25 you might be right. Let me say something. I've

1 certainly read all the statutes everybody's referring
2 to, Attorney Brown and all that stuff and there's
3 nothing factually that Mr. Preate or Mr. Borland has
4 told the court that I would disagree with. But when I
5 --- when it's --- there are people making allegations
6 and there are people making statements about the facts
7 which are simply not true.

8 JUDGE JANDEBEUR:

9 Okay. Sir, you're not supposed to say
10 that. And you know, people and lawyers are always
11 going to disagree, so you're not telling me anything
12 I'm not fully aware of.

13 ATTORNEY ALBERT:

14 Let me say this. Okay? February 2006
15 as, not evidence, but just to give everybody an
16 understanding of where my client's coming from.
17 February 2006 are the dates the sons took over the
18 company. Now, whether or not they updated the
19 Department of State Registry or whatever, probably
20 not, most people don't, but the point is that February
21 2006 is when the sons assumed control of the company.
22 It is ---.

23 JUDGE JANDEBEUR:

24 The company being called Kresky and Sons,
25 really.

1 ATTORNEY ALBERT:

2 Carl Kresky and Sons.

3 JUDGE JANDEBEUR:

4 You're going to have to be careful here,
5 because we all got to come back to Carl and Sandra, so
6 be careful which one you're talking about.

7 ATTORNEY ALBERT:

8 Carl L. Kresky and Sons, which is not
9 Carl Kresky, it is the grandfather. This company has
10 been in existence since whenever. Okay. Now, it is a
11 contested fact from our perspective as to whether or
12 not Carl L. Kresky and Sons is an affiliated entity
13 with the two utilities. There's a total separation of
14 parties, there are no ---.

15 JUDGE JANDEBEUR:

16 Okay. Let's leave all that stuff for
17 evidence.

18 ATTORNEY ALBERT:

19 Thirdly. And this is a practical manner.
20 We have, in fact, provided the documents for the
21 satisfaction and the removal of all the liens. The
22 court is correct in knowing that there is a small
23 caveat, and I do not believe it to be a significant
24 caveat or the court is right. I would put it --- and
25 I'm not an idiot. I would put it in the documents

1 that it would be an expressed condition precedent to
2 the Bank of America liens being satisfied. I'm a bank
3 lawyer, I'm a business lawyer, everybody in this room
4 that has practiced law know that if a bank does not
5 institute any collection proceedings for 12 years that
6 the mortgages are satisfied. This county has had a
7 --- Luzerne County has a sordid history in getting
8 mortgage satisfactions of record. There are
9 lawsuits ---.

10 JUDGE JANDEBEUR:

11 Okay. Let's leave that for evidence.

12 ATTORNEY ALBERT:

13 Now, as a practical manner, Mr. Borland
14 is correct, we have given the satisfactions, we have
15 given the mortgage, the mechanic's liens satisfactions
16 which by their express terms have no qualifications
17 whatsoever. Certainly I can't speak for the history
18 of this, but I can tell you that in dealing with Mr.
19 Borland and Mr. Preate, there has been no delay in
20 dealing with me on their part. I'm tired of getting
21 their calls and we have resolved all of the issues
22 that exist for, apparently, this closing to proceed.
23 I understand Aqua's position. I am willing to
24 cooperate as I told Attorney Brown last week. If Aqua
25 has a concern about the mortgages that were filed ---

1 well, before I even knew these people existed, I
2 concur for the record, that those mortgages are not
3 soundly based. They are void and I have no problem if
4 it helps facilitate this procedure, reduces the court
5 time on behalf of my clients, we'll say, okay, the 1.6
6 million dollar mortgages that were drafted by people
7 that I don't know, other lawyers that didn't do the
8 right job, fine.

9 JUDGE JANDEBEUR:

10 Fine what?

11 ATTORNEY ALBERT:

12 I agree with them. They are void. If it
13 helps facilitate this procedure, as I told Attorney
14 Brown last week, if asked, I will agree to have them
15 placed on the record now. What I will not agree to on
16 behalf of Carl L. Kresky and Sons is for the
17 discontinuances of the mechanic's lien. Now, let me
18 tell you where that's coming from. The \$41,000 was
19 not a figure that we picked out of the air. The
20 \$41,000 figure is for work that was done to comply or
21 to attempt to comply with an order of this court.

22 JUDGE JANDEBEUR:

23 Okay. The \$41,000 is not in a petition
24 motion answer, nothing; correct? This is a new
25 figure.

1 ATTORNEY ALBERT:

2 It has --- it's been disclosed. I mean,
3 it has been a process since this process has
4 apparently been going on and I haven't been involved
5 in it. But I got to tell you something, from a
6 practical point of view, I don't understand why I'm
7 here because we have agreed to do everything that
8 everybody has asked us to do.

9 JUDGE JANDEBEUR:

10 With exception of the \$41,000?

11 ATTORNEY ALBERT:

12 Yes. Yes, ma'am.

13 JUDGE JANDEBEUR:

14 Okay. And what about the three
15 mechanic's liens?

16 ATTORNEY ALBERT:

17 The \$41,000 is coming out of that.

18 JUDGE JANDEBEUR:

19 And only \$41,000 or \$41,000 plus all of
20 these?

21 ATTORNEY ALBERT:

22 \$41,000. \$41,000. The concerns ---.

23 JUDGE JANDEBEUR:

24 Okay. Okay. \$343,000 and \$186,000 and
25 \$93,000 all go away and they are replaced with

1 \$41,000.

2 ATTORNEY ALBERT:

3 Now, where the rub is, is that we have
4 spent a great deal of time certainly on behalf of my
5 clients so that I don't end up, you know, not
6 performing my job correctly. We have the --- Mr.
7 Preate and Mr. Borland have sat down, we have gone
8 through a projected settlement sheets, we've gone
9 through okay with the, you know, with the allocations
10 and the earmarks and all that that come out of the
11 APA. There is going to be sufficient funds without
12 any price increase for my clients to get the \$41,000.

13 JUDGE JANDEBEUR:

14 And only \$41,000?

15 ATTORNEY ALBERT:

16 And only \$41,000. The fly in the
17 ointment, and what we've been trying to explain here
18 is that if the Bank of America judgments are not
19 removed, which everybody believes that they will be
20 'cause they've been paid, there will not be sufficient
21 sums available to give us to pay to my clients the
22 \$41,000.

23 JUDGE JANDEBEUR:

24 Okay. I got it. I got it. All right.
25 Now, do I still need to hear you two or can we move

1 on?

2 ATTORNEY PREATE:

3 With all do respect from my colleague,
4 Mr. Brown, about the delay here. Let's be clear.
5 There's only two people that have signed the APAs, and
6 they have been Carl and Sandy Kresky and they signed
7 them in January of this year and they signed them
8 again in June to revise. The only people that haven't
9 signed this is Aqua. All right. So let's talk about
10 who's delaying it.

11 JUDGE JANDEBEUR:

12 Okay. I don't want to hear this, Mr.
13 Preate.

14 ATTORNEY PREATE:

15 And one more thing ---.

16 JUDGE JANDEBEUR:

17 Mr. Preate.

18 ATTORNEY PREATE:

19 Judge, look ---.

20 JUDGE JANDEBEUR:

21 Mr. Preate, listen to me for one second.
22 We're --- geez, we're already at an hour and we
23 haven't even started, we're still just gabbing. So if
24 you don't mind, I'm going to stall you out on that.
25 If we need evidence on that, then you're free to go

1 and put some witnesses on, but I want to move on. Mr.
2 Borland, did you have anything to add or are you happy
3 at this point?

4 ATTORNEY BORLAND:

5 I'm just concur that we have ---.

6 JUDGE JANDEBEUR:

7 It's not you stalling.

8 ATTORNEY BORLAND:

9 Absolutely.

10 JUDGE JANDEBEUR:

11 Okay. Fine. Then I got it. Mr. Niesen,
12 you wanted to say something?

13 ATTORNEY NIESEN:

14 Yes, Your Honor. I want to make a
15 comment on what was said about this agreement between
16 my colleagues here concerning the recording of the
17 satisfaction pieces. I have not been involved in any
18 way with whatever agreement they have between the
19 three of them to get those documents recorded where
20 they should be recorded.

21 JUDGE JANDEBEUR:

22 Now, which --- what are we talking about?
23 Are we talking about affiliated interests?

24 ATTORNEY NIESEN:

25 The mortgages, the mechanic's liens, all

1 of these things.

2 JUDGE JANDEBEUR:

3 How come? How come you haven't, if it's
4 you that's got to sign off on.

5 ATTORNEY NIESEN:

6 Yes, and our position is pretty simple.
7 They need to resolve those mortgages, mechanic's
8 liens, they need to have them satisfied in every way
9 possible.

10 JUDGE JANDEBEUR:

11 So that when you do a title search, it
12 comes up clean.

13 ATTORNEY NIESEN:

14 That's right and it needs to be done
15 before we execute the Asset Purchase Agreement, not at
16 closing whenever that occurs later, but before the
17 agreements are signed.

18 JUDGE JANDEBEUR:

19 That's good advice to your client. Okay.

20 ATTORNEY NIESEN:

21 And let me say something about delay.

22 JUDGE JANDEBEUR:

23 No, no, I don't want to hear it. Go
24 ahead, sit down, Mr. Niesen.

25 ATTORNEY NIESEN:

1 I think ---.

2 JUDGE JANDEBEUR:

3 No, I really don't need to hear that.
4 That's just diatribe between you all. You can do that
5 on your own time. All right.

6 ATTORNEY KLEIN:

7 Your Honor, before we proceed, I'm
8 Michael Klein. I'm Legal Counsel for Pennsylvania
9 American Water which is also a party to this
10 proceeding. We're a reluctant party brought in under
11 529 ---

12 JUDGE JANDEBEUR:

13 So am I.

14 ATTORNEY KLEIN:

15 --- and we do not want to do anything to
16 interfere with the negotiations between Aqua and the
17 other parties. We're here just to monitor the
18 proceeding and to make sure there isn't a zig or a zag
19 that turns on Pennsylvania American.

20 JUDGE JANDEBEUR:

21 Sure. Fine.

22 ATTORNEY KLEIN:

23 Thank you, Your Honor.

24 JUDGE JANDEBEUR:

25 Sure. Anybody else in the audience that

1 needs to tell me who they are and what they're doing
2 here? Okay.

3 The problem that you all have put in
4 front of me is that, assuming even Mr. Kresky was here
5 and we did a full hearing on the issues as related by
6 both petition and the motion and Mr. Niesen's answer,
7 we get past all of that. You all have put all your
8 evidence on and then you want a decision from me and
9 my decision is going to be, they're an affiliated
10 interest, all of the liens that have to do with Carl
11 Kresky and Sons in Washington Park, they're all known
12 for it. Okay. We just --- we use 2104 and 2105, 21,
13 excuse me, 21 ---

14 ATTORNEY BROWN:

15 2105.

16 JUDGE JANDEBEUR:

17 No, hold on, it's in my notes. 2102 and
18 2105, we use those as the legal hook to say, those are
19 null and void. They were left with the Bank of
20 America ones, we use 1904 to get rid of that. I do a
21 decision and I said they all go away. That isn't
22 going to help you guys.

23 ATTORNEY BROWN:

24 No, that's right.

25 JUDGE JANDEBEUR:

1 It's not going to help you guys so we are
2 absolutely wasting time here and the reason it's not
3 going to help you is because Mr. Niesen, on behalf of
4 his client, isn't going to accept it because nobody
5 knows if I've got the authority especially on the 1904
6 one, if I have the authority. I do have the
7 authority, but what does it get you? I can use 1904
8 to get rid of that. I can use it to get rid of all of
9 it and Mr. Niesen, wisely, is going to advise his
10 client that you still don't have the legal answer.
11 You have an Administrative Law Judge's answer. That
12 question could go to Commonwealth Court. It could
13 even go higher than that because I don't know what the
14 answer would be. So let me make a suggestion for you
15 all to consume.

16 It sounds to me that all of these
17 encumbrances, all three of you or four of you,
18 including Mr. Albert's client, would agree to make
19 them all go away if we can make the Bank of America
20 ones go away. I think everybody agrees with that,
21 and that would make Mr. Niesen's client happy. Now,
22 is it going to be your client's position, Mr. Niesen,
23 that assuming everybody agrees they all go away,
24 assuming we get a legal ruling from Common Pleas that
25 the mortgages with Bank of America have been

1 satisfied. Would your client agree to the now
2 required \$41,000 encumbrance on the sale price or is
3 your client going to say no?

4 ATTORNEY NIESEN:

5 I do not know what the answer to that is
6 this morning.

7 JUDGE JANDEBEUR:

8 Okay.

9 ATTORNEY NIESEN:

10 It's not clear to me how, there appear to
11 be mechanic's liens totaling \$400,000; are they going
12 to be revised?

13 JUDGE JANDEBEUR:

14 Well ---.

15 ATTORNEY NIESEN:

16 I don't know the answers to those things.

17 JUDGE JANDEBEUR:

18 Okay. I don't know how, legally, they're
19 going to accomplish it, but I did hear very clearly
20 that they would go away and be replaced by 41K. I did
21 hear that very clearly. How legally it would be
22 accomplished, I leave that to you guys to figure out.
23 But one way or another, it was made clear to me that
24 they are willing, Mr. Albert's client is willing, Mr.
25 Preate, Mr. Borland's client is willing to make those

1 three encumbrances go away only if they're replaced
2 with a \$41,000 encumbrance that would come off the
3 sale; am I saying that correctly?

4 ATTORNEY PREATE:

5 No, you're not. No.

6 JUDGE JANDEBEUR:

7 Oh, well, correct me, Mr. Preate.

8 ATTORNEY PREATE:

9 First of all, there is a Common Pleas
10 Court proceeding on the mechanic's liens, Judge, I
11 don't know whether you're aware of that.

12 JUDGE JANDEBEUR:

13 But I don't care. If you all said that
14 you are willing to write them off, then that goes away
15 as well.

16 ATTORNEY PREATE:

17 We have resolved that with Judge Vanston
18 up in Wyoming County.

19 JUDGE JANDEBEUR:

20 And what was the resolution?

21 ATTORNEY PREATE:

22 The resolution is the agreement that we
23 have to take care of 600 and some thousand dollars
24 worth of mechanic's lien and reduce it down to an
25 agreed upon sum of \$41,000, which is not an

1 encumbrance lien that's going to be filed to block
2 this sale. It's only an assignment that we have the
3 agreement executed by my clients, signing whatever
4 nets, whatever they net out of this, that of that net,
5 which we anticipate a settlement between \$70,000 and
6 \$75,000, that of that proceeds that they would get,
7 here's their signatures, that they would assign
8 \$41,000 out of the net proceeds that they have in
9 their pocket to the drilling company, so that is not
10 an encumbrance.

11 JUDGE JANDEBEUR:

12 It's not an encumbrance. Okay.

13 Well ---.

14 ATTORNEY PREATE:

15 It is not an encumbrance. It is not an
16 encumbrance.

17 JUDGE JANDEBEUR:

18 Okay. I understand.

19 ATTORNEY PREATE:

20 It's an agreement between ---.

21 JUDGE JANDEBEUR:

22 So it actually will not effect the APA at
23 all?

24 ATTORNEY PREATE:

25 Exactly.

1 JUDGE JANDEBEUR:

2 It's just an agreement between Washington
3 Park Sanitary, Washington Park Water, that they will
4 get whatever money from the APA, they'll give Carl
5 Kresky and Sons Drilling Company \$41,000.

6 ATTORNEY PREATE:

7 That's exactly right, but they're going
8 to ---.

9 JUDGE JANDEBEUR:

10 Okay. Does that change your position at
11 all, Mr. Niesen?

12 ATTORNEY NIESEN:

13 Your Honor, my position is that these,
14 the two mortgages, they total 3.2 million dollars, I
15 believe, and three large mechanic's liens which total
16 another \$400,000, \$500,000, that all of which came of
17 record after this proceeding started and after we had
18 our first session with the mediator in September of
19 last year, those need to be listed, recorded and
20 satisfied at the appropriate county office.

21 JUDGE JANDEBEUR:

22 Okay.

23 ATTORNEY NIESEN:

24 Wherever that is and however that needs
25 to occur or needs to be done before we execute the

1 Asset Purchase Agreement. Now, if --- that's our
2 view.

3 JUDGE JANDEBEUR:

4 I understand. Yes. Okay.

5 ATTORNEY BROWN:

6 Your Honor, for clarification, there is
7 also mechanic's liens. What are three mechanic's
8 liens signed in Luzerne County? I don't have anything
9 on that other than the pleadings. I have the
10 pleadings of all the action in Wyoming County, but
11 just so everyone's aware of, there's another county
12 involved here as well.

13 JUDGE JANDEBEUR:

14 Okay.

15 ATTORNEY BROWN:

16 And Your Honor, what I would ask is
17 whatever we do today, I would be able to preserve what
18 we have in our pleading. I don't want anything to
19 cause that to be res judicata or anything like that.

20 JUDGE JANDEBEUR:

21 We never put any evidence on. So far,
22 we're still just gabbing.

23 ATTORNEY BROWN:

24 Understood. Because if all this falls
25 through and we have to proceed with the 529 to direct

1 the company, we'll need to deal with these issues at
2 that time as well.

3 JUDGE JANDEBEUR:

4 Okay. Nothing is res judicata at this
5 point. You know, I really would like to be able to
6 facilitate you guys coming to an agreement and being
7 able to go back and execute this Asset Purchase
8 Agreement and you're really making it difficult to do
9 that.

10 ATTORNEY PREATE:

11 May I make a suggestion, Judge?

12 JUDGE JANDEBEUR:

13 Sure.

14 ATTORNEY PREATE:

15 And that is that I would like for you to
16 continue this hearing to 20 days from now
17 approximately or whatever is convenient with your
18 schedule, at which time we would have Bank America
19 subpoenaed to present themselves in court before you
20 and I think that will help drive the immediate
21 resolution of the Bank America matter and as if that
22 falls, it's like dominoes, everything falls, and APAs
23 get signed because we will immediately --- then they'd
24 agree, at that proceeding before you, here, that yes,
25 they don't have any records, we don't know, and they

1 would have to agree at that point, they would be on
2 the record, then the case is over.

3 JUDGE JANDEBEUR:

4 Not really, because Mr. Niesen is still
5 going to insist that somehow or another when he does a
6 title search, it needs to come up clean.

7 ATTORNEY PREATE:

8 Oh, it will. I grant you that that would
9 --- that's what I said, the dominoes would fall. Bank
10 America's resolved and the mortgage satisfaction is,
11 well, he's already agreed, Mr. Albert's already agreed
12 to have those filed immediately which is, I thought, a
13 very significant step here today which may have gone
14 over everyone's head. But the fact is they would be
15 resolved and the mechanic's liens would be resolved.

16 Now, the only one that would be left,
17 interestingly enough, that would still be of record is
18 the Fox Rothschild mortgage for a hundred and some
19 thousand dollars. And interesting enough, Aqua takes
20 a different position with respect to the Fox
21 Rothschild. They say, at that time, at the closing
22 you can satisfy a Fox Rothschild. They're not asking
23 that the Fox Rothschild be removed prior to closing,
24 they're saying, at closing, Fox Rothschild can be
25 marked satisfied. Interesting.

1 JUDGE JANDEBEUR:

2 Well, that's because they are
3 putting ---.

4 ATTORNEY NIESEN:

5 Let me speak to that.

6 JUDGE JANDEBEUR:

7 Well, they are putting up some of the
8 money for it.

9 ATTORNEY NIESEN:

10 That's right. And there was a discussion
11 about how the Fox Rothschild lien would be addressed.
12 That was handled ---

13 JUDGE JANDEBEUR:

14 That one doesn't bother me.

15 ATTORNEY NIESEN:

16 --- months ago. It has no relationship
17 and no similarity to these things that were recorded
18 after this process started and only came of light
19 after September of last year and they were only
20 recorded after September of last year.

21 ATTORNEY PREATE:

22 And by the way, both Mr. Borland and I,
23 we have steadfastly stated on the record that we had
24 nothing to do with the filing of those mortgages; am I
25 correct?

1 ATTORNEY BORLAND:

2 Absolutely. And everyone in the room
3 knows that.

4 ATTORNEY PREATE:

5 We had nothing to do with the filing of
6 those mortgages or the mechanic's liens and neither
7 did Mr. Albert.

8 JUDGE JANDEBEUR:

9 I think the problem that Mr. Niesen's
10 client has with it is the same problem that I have.
11 Number one, they shouldn't have been filed. Number
12 two, since they're stalling out the process, they
13 should be taken off the books, which obviously your
14 client has the power to do and he hasn't done it. So
15 I think that's what's bothering people is they should
16 have been cleared and they have not, so now they're
17 stalling out the process and we have to deal with
18 them.

19 I think, Mr. Brown, that unfortunately
20 for you, that I do sense that you want to go forward,
21 I do think that it is a complete waste of time. I
22 think that we will do a more orderly and more
23 understandable record if we do it all together. And
24 if we do it piecemeal with you trying to patch
25 testimony that you did today with testimony that you

1 would get some subsequent day, it's going to be not
2 only difficult for you, but difficult for me and since
3 I'm the one burdened with trying to figure out what
4 the appropriate legal decision in this matter is, I
5 would like as clean a record as I can get so I would
6 suggest that --- no, I would order your client to
7 request a subpoena for Bank of America to attend the
8 next hearing and address these three mortgage
9 encumbrances to that end.

10 ATTORNEY PREATE:

11 Can I ask you one other thing, Judge?

12 JUDGE JANDEBEUR:

13 To that end, hopefully a subpoena will
14 light a fire under them to clear it so that we don't
15 need them and if we don't need them, you all pretty
16 much can resolve the rest of it without me. But it
17 may not and we may go to hearing and that's that.

18 ATTORNEY PREATE:

19 We ask one other thing, Mr. Borland and
20 I, and that is if you would order that they answer the
21 petition within 20 days.

22 JUDGE JANDEBEUR:

23 What petition, yours?

24 ATTORNEY PREATE:

25 The amended petition.

1 ATTORNEY BORLAND:

2 Directed to Bank of America?

3 ATTORNEY PREATE:

4 Directed to the Bank America.

5 JUDGE JANDEBEUR:

6 Yes, except that they're not a party, so
7 how can I order a non-party to answer a petition?

8 ATTORNEY PREATE:

9 Just because that's the way it's done.
10 If I get a regular complaint that's filed in Court of
11 Common Pleas that says on the front of it, you have 20
12 days to file an answer, even though they're not a
13 party yet, they haven't answered it, but you can still
14 direct that they answer it. We're asking for an order
15 directing them to answer within 20 days in addition to
16 the subpoena.

17 ATTORNEY NIESEN:

18 A Notice to Plead?

19 ATTORNEY PREATE:

20 A Notice to Plead, exactly.

21 JUDGE JANDEBEUR:

22 Did your original petition and your
23 amended petition go to them?

24 ATTORNEY PREATE:

25 Yes, it did.

1 ATTORNEY BORLAND:

2 Yes.

3 JUDGE JANDEBEUR:

4 Both went to them?

5 ATTORNEY BORLAND:

6 Yes.

7 ATTORNEY PREATE:

8 Yes, but there's no Notice to Plead,
9 there's nothing in the public utility practice that
10 I'm aware of that allows for a Notice of Plead unless
11 it's ordered by the court.

12 ATTORNEY DAVISTON:

13 We attach them with all of ours.

14 ATTORNEY PREATE:

15 You attach one to yours, Rhonda? Oh,
16 okay. Well, we should --- it would be helpful then,
17 if we ---.

18

19 ATTORNEY BORLAND:

20 Well, we could file an amended.

21 ATTORNEY PREATE:

22 We could've filed another amended, but in
23 other words, it would be, you could order it, Judge.

24 ATTORNEY BORLAND:

25 If that's the profile, I'm going to have

1 to file the amended petition and get in their hands
2 now.

3 ATTORNEY PREATE:

4 Serve that today.

5 MRS. KRESKY:

6 Can I say something, Joe?

7 ATTORNEY ALBERT:

8 No.

9 JUDGE JANDEBEUR:

10 Have either of you spoken with this Alana
11 Rodriguez, the Liens Department, Bank of America?

12 ATTORNEY BORLAND:

13 Yes. I've spoken to her and she referred
14 me to a Beverly Carson. And so I'm --- my dealings
15 have been originally with Ms. Rodriguez and then
16 probably ten phone conversations with Ms. Carson,
17 basically saying at the outset that an affidavit from
18 the mortgage orders that the notes have been paid
19 would be sufficient, then backing off and taking the
20 position saying she just didn't know. Since service
21 of the original petition, she has not returned my
22 phone calls. I have no other contact person at that
23 level, so we served and we haven't heard from them
24 since then.

25 JUDGE JANDEBEUR:

1 Okay.

2 ATTORNEY ALBERT:

3 Judge, historically, I was peripherally,
4 in my practice, my legal career, I was peripherally
5 involved in bank acquisitions and it's a nightmare
6 because what happens is I'm sure when Bank of America
7 purchased Summit Bank and Hanover Bank, they had
8 incompatible computer systems, the records are shipped
9 all around the country, so I'm not trying to defend
10 Bank of America, but it's just --- it's a nightmare
11 when banks try to ---.

12 JUDGE JANDEBEUR:

13 Well, there's also nothing on this that
14 would alert them that they needed to answer to it.
15 You know, they just --- I'm sure that whoever got
16 this, Alana Rodriguez and the other Bank of America
17 that's copied on here, they just put it in the file.
18 There was nothing to alert them that they needed to do
19 anything with it other than receive it. They didn't
20 get a Notice to Plead, they weren't --- you didn't
21 file anything to request that they be brought in as an
22 indispensable party. I mean, there's a number of ways
23 that they could have brought in alert and alerted that
24 they were indeed, they had in indispensable need to
25 answer some questions for us, but they haven't. At

1 this point, they've just gotten a copy of it.

2 ATTORNEY NIESEN:

3 Your Honor.

4 JUDGE JANDEBEUR:

5 Go ahead, Mr. Niesen.

6 ATTORNEY NEISEN:

7 Your Honor, might we ask of the WP
8 Companies that is there a Court of Common Pleas action
9 pending in regard to the Bank of America order?

10 ATTORNEY PREATE:

11 Have we filed an action in Wyoming County
12 Court?

13 ATTORNEY NIESEN:

14 Anywhere.

15 ATTORNEY PREATE:

16 No, we have not, we have not. Under the
17 statute, which we intend to do is, there's a 2002
18 statute under the banking law that says if you notify
19 them that the mortgage has been satisfied and they
20 don't satisfy it, then they're in, and then you can go
21 proceed to court and that was done in Luzerne County
22 against PNC Bank.

23 ATTORNEY ALBERT:

24 There's a specific statutory notice that
25 I understand that you have to get and then there's a

1 waiting period and then ---.

2 ATTORNEY PREATE:

3 But we would do that if need be, but
4 we're, one thing we haven't done here is got a Notice
5 to Plead, but we could --- we could do the statutory
6 notice, go by certified mail and ---.

7 ATTORNEY NIESEN:

8 Is it accurate to say then, the notice
9 that Mr. Albert mentioned has been given to Bank of
10 America in regard to it's mortgage or mortgages?

11 ATTORNEY PREATE:

12 Well, in this amended petition, we make
13 an allegation under oath that the mortgages have been
14 satisfied, now, that oath was given by both Sandy and
15 Carl Kresky. Now, we're going to follow it up with a
16 certified letter and I'm going to send a copy of the
17 statute to this. And we already faxed a copy of this
18 to Ms. Rodriguez, but we send a certified letter and a
19 copy of the statute, they're going to have to answer,
20 otherwise they're going to owe us \$75,000.

21 ATTORNEY NIESEN:

22 Okay. So you believe you set the ball
23 rolling.

24 ATTORNEY PREATE:

25 We've set the ball rolling, exactly Tom.

1 ATTORNEY NIESEN:

2 The statutory action against Bank of
3 America?

4 ATTORNEY PREATE:

5 Absolutely. We have tried to do the
6 informal route with Mr. Borland, that didn't seem to
7 get anywhere. We filed an action here, we filed an
8 amended action, we got to get a Notice of Plead, we,
9 I'll allege now under oath, this is what they wanted
10 in the beginning, they wanted an affidavit that they
11 had, that those mortgages were satisfied. We have now
12 given them that in this lawsuit.

13 ATTORNEY NIESEN:

14 In the amended joint ---?

15 ATTORNEY PREATE:

16 In the amended petition that we just
17 filed the other day.

18 ATTORNEY NIESEN:

19 The amended petition.

20 ATTORNEY PREATE:

21 The amended petition we filed the other
22 day. That's under oath, so they have that now. So
23 we'll follow it up with a letter under the statute,
24 the certified letter.

25 ATTORNEY NIESEN:

1 And are they obligated now to respond and
2 how many days?

3 ATTORNEY PREATE:

4 Yes. They will be obligated under that
5 statute to answer that. If not, then you go to Common
6 Pleas Court and you litigate that. On the other hand,
7 the way to deal with it here, needs to get them in the
8 court and start answering and Judge Jandebaur is
9 correct and we need a Notice to Plead or some, as I
10 said, we would request some directive from the court
11 here to them to say answer in 20 days.

12 ATTORNEY NIESEN:

13 My only question, Ernie, are they --- in
14 your view are they --- is Bank of America obligated
15 now, based on the amended petition that was sent to
16 them, to respond in a certain number of days whether
17 they view the mortgages still alive or not?

18 ATTORNEY PREATE:

19 They're --- I believe that they're
20 obligated to answer to the PUC even though there's no
21 Notice to Plead. Secondly, there is, other than that
22 there is no other obligation, except when we send them
23 the certified letter under the statute, I don't know
24 whether we cited that in here, but ---.

25 JUDGE JANDEBEUR:

1 I don't think so.

2 ATTORNEY PREATE:

3 Pardon?

4 JUDGE JANDEBEUR:

5 I don't think you did.

6 ATTORNEY PREATE:

7 No, but there is a statute passed in 2002
8 that says if you send them a certified, it has to be
9 certified letter.

10 ATTORNEY NIESEN:

11 Okay. So the certified letter didn't go
12 then?

13 ATTORNEY PREATE:

14 No, that has not gone yet, that has not
15 gone yet.

16 ATTORNEY ALBERT:

17 My reading of the statute, Your Honor, is
18 that the cause of action by claim of damages for
19 failure to satisfy a mortgage does not accrue or even
20 --- it does not exist until, I think it's, from
21 memory, I think it's 90 days from a request to satisfy
22 a mortgage that there is no claim against the bank
23 unless you send the request, normally to the closing,
24 here's your payoff, you know, satisfy the mortgage if
25 they then refuse to, at that point, the cause of

1 action accrues, up to that point, the borrower is
2 remediless until they make the request that the
3 mortgage be satisfied and then the bank fails to do
4 that. At that point there is a cause of action, so up
5 to this point you can't sue anybody until ---.

6 ATTORNEY PREATE:

7 Okay. That's why your proceeding is
8 direct for expeditious one.

9 JUDGE JANDEBEUR:

10 Okay. Let's do this, Mr. Preate. You
11 filed the amended petition on Friday?

12 ATTORNEY PREATE:

13 Yes.

14 JUDGE JANDEBEUR:

15 And this is only Tuesday.

16 ATTORNEY PREATE:

17 Yes.

18 JUDGE JANDEBEUR:

19 I would like you to do a Notice to Plead
20 and for your reference, it's 52 PA Code 5.63. This is
21 new matter and new matter needs to have a Notice to
22 Plead. You need to send --- resend your amended
23 petition to the two parties that you listed for Bank
24 of America with the Notice to Plead on it. They will
25 then have 20 days from service to get an answer to me

1 and obviously you need to include the party list so
2 that they serve it to everyone. Now, at the same
3 time, you'll request a subpoena to have Bank of
4 America attend the next hearing and let's talk about
5 next hearing dates. I think a subpoena, I forget, I
6 think it's ten days. A subpoena is not 20, I think
7 subpoenas are ten days.

8 ATTORNEY NIESEN:

9 Yes, Your Honor, it's ten days.

10 JUDGE JANDEBEUR:

11 Is that right? Yes. So we'll do ---
12 today's what, 22nd of July. So we can probably be
13 ready both with the 20 days for your Notice to Plead
14 to get the answer back to us and the subpoena and let
15 them have time to respond to it if we set a hearing
16 for the middle of August. Anybody disagree with that?
17 Does that sound about right? Does anybody have any
18 problem with the week of August the 18th, a Tuesday or
19 Wednesday hearing, that would put us at August 19 or
20 20.

21 ATTORNEY BORLAND:

22 I have just one moment to check my
23 calendar.

24 JUDGE JANDEBEUR:

25 Yes.

1 ATTORNEY ALBERT:

2 I don't know if my client's considered to
3 be an indispensable party, I will certainly make
4 whatever accommodations. My children are scheduled to
5 start school in Florida on August 19th. I hope to be
6 there since they're four.

7 JUDGE JANDEBEUR:

8 So you want the 20th, is that what you're
9 telling me?

10 ATTORNEY ALBERT:

11 That would be fine. At least I can.

12 JUDGE JANDEBEUR:

13 Okay. So everybody look at the 20th,
14 August 20th, it's a Wednesday. --- okay. Not hearing
15 any no's here.

16 ATTORNEY BORLAND:

17 I'm sorry. I just turned it off here.
18 Wednesday, that looks fine.

19 JUDGE JANDEBEUR:

20 Okay. That's the day I'm going to tell
21 Harrisburg to schedule it. Since quite a number of
22 you have come up from Harrisburg, may I make a
23 suggestion that as we get close to the 20th if there's
24 anything that means that we will once again meet and
25 spend an hour and a half just turning wheels but

1 accomplishing nothing, please give me a call so that
2 we can not do this. You know, this is too many people
3 driving up from Harrisburg to not be able to actually
4 convene. Now, I know a long time ago --- you wanted
5 to say something, Mrs. Kresky? Did we make it go away
6 or did you still want to say something?

7 ATTORNEY PREATE:

8 Judge, what she wanted to say is that her
9 husband is desperately trying to get water up there to
10 the folks and needs the help and cooperation of all
11 the folks that can possibly help out. Am I saying
12 that correctly?

13 MRS. KRESKY:

14 They haven't had any water for a day and
15 a half.

16 JUDGE JANDEBEUR:

17 Yes. I think that would be more DEP than
18 it would be PUC. But at this point, there's not
19 really a whole lot I can do on that issue.

20 ATTORNEY PREATE:

21 I appreciate that, Judge. That's all she
22 wanted to say.

23 ATTORNEY WONG:

24 Your Honor, may I just renew my request
25 for some reaffirmation that WP be required to

1 communicate the repairs and future outages that may
2 occur to the best of it's ability so that the
3 customers know what to expect and to the extent that
4 it knows where alternate available sources of water is
5 on that which should be included in communication at
6 this point. As you understand I've been getting
7 additional messages from my office and to be more
8 specific from what I said earlier this morning, it
9 does appear that the water that has been carted in as
10 an emergency source is non-pollutable water, so there
11 is the problem of having pollutable water.

12 ATTORNEY JANDEBEUR:

13 Would you relay that to your client, Mr.
14 Preate?

15 ATTORNEY PREATE:

16 What's wrong with the water that's
17 being ---?

18 ATTORNEY WONG:

19 Right. I think you came in a few minutes
20 after I informed the group here today that our office
21 has received the report from the township that
22 numerous complaints have come in with water outage,
23 I'm not sure the extent throughout the WP system,
24 but ---.

25 MRS. KRESKY:

1 The whole park is down. The pump is
2 burned up and the other well is dry and there is no
3 water for the people up there and you people know
4 that. You've been told that and our repair company
5 that used to fix it, you said they can't work for us
6 anymore. So we've got 200 people up there, families,
7 children that has no water and we have no way or no
8 source of fixing it. So you tell me how he's going to
9 fix it? My husband's 71 years old, he's up there
10 trying to fix it by himself. Well, I think ---.

11 ATTORNEY WONG:

12 And maybe Your Honor could also clarify
13 then ---.

14 MRS. KRESKY:

15 Do you have anybody we can call that
16 would come in and work? .

17 ATTORNEY WONG:

18 The obligation to make the repairs
19 remains with WP so long as ---.

20 MRS. KRESKY:

21 Well, then take it away from us. Execute
22 your 529 and give it to PA America.

23 ATTORNEY WONG:

24 I understand that, Mrs. Kresky, and ---.

25 MRS. KRESKY:

1 Do any of you care about the people?

2 ATTORNEY PREATE:

3 Please, don't ---.

4 JUDGE JANDEBEUR:

5 Go ahead.

6 ATTORNEY WONG:

7 That was another concern I just wanted to
8 bring up to Your Honor that there has been a concern
9 that there could be a delay or perhaps reluctance to
10 fix a problem at WP while we are relatively close to
11 transitioning to new ownership. And I would just ask
12 Your Honor to clarify for the record that certainly
13 while WP remains in the hands of Mr. and Mrs. Kresky
14 that is their obligation to find whatever means it is
15 within their ability to serve these customers to get
16 the financing, to get the funding. However, it may be
17 and the expertise to implement the solution.

18 JUDGE JANDEBEUR:

19 Okay. Thank you. Mr. Preate and Mr.
20 Borland, I'll leave that to you to relay to your
21 clients.

22 ATTORNEY BORLAND:

23 Thank you, Your Honor.

24 JUDGE JANDEBEUR:

25 Anything else before we adjourn?

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ATTORNEY BORLAND:

No, Your Honor.

JUDGE JANDEBEUR:

Okay. I will see you all on August 20th.
Mr. Preate, I'm looking forward to getting the Notice
to Plead and the subpoena --- request for subpoena.
Okay?

ATTORNEY PREATE:

You mentioned a section to start out
with.

JUDGE JANDEBEUR:

5.63 and it's not the statute, it's the
code.

ATTORNEY PREATE:

Oh, okay.

JUDGE JANDEBEUR:

Okay. So we are adjourned. Thank you.

* * * * *

HEARING CONCLUDED AT 11:20 A.M.

* * * * *

